(19,577.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904.

No. 477.

BERTHA DOCTOR AND KATHERINE SAYLES, APPELLANTS,

vs.

JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL SAYLES COMPANY, AND SAYLES, ZAHN COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Subpœna	1	1
Marshal's return	2	1
Bill of complaint	4	2
Appearance for defendants Harrington	19	11
Appearance for Sayles, Zahn Co.	20	12
Answer of defendants Harrington	21	12
Answer of defendant Sayles, Zahn Co	31	18
Replication to answer of defendants Harrington	34	20
Replication to answer of defendant Sayles, Zahn Co	37	21
Order to show cause	40	23
Affidavit of Philip J. Britt	41	24
Memorandum opinion of Lacombe, J	44	25
Decree	45	26
Certificate of question of jurisdiction	49	28
Petition for appeal	64	36
Order allowing appeal	65	37
Assignment of errors	67	38
Bond on appeal	69	39
Citation and service (copy)	73	41
Clerk's certificate	75	42

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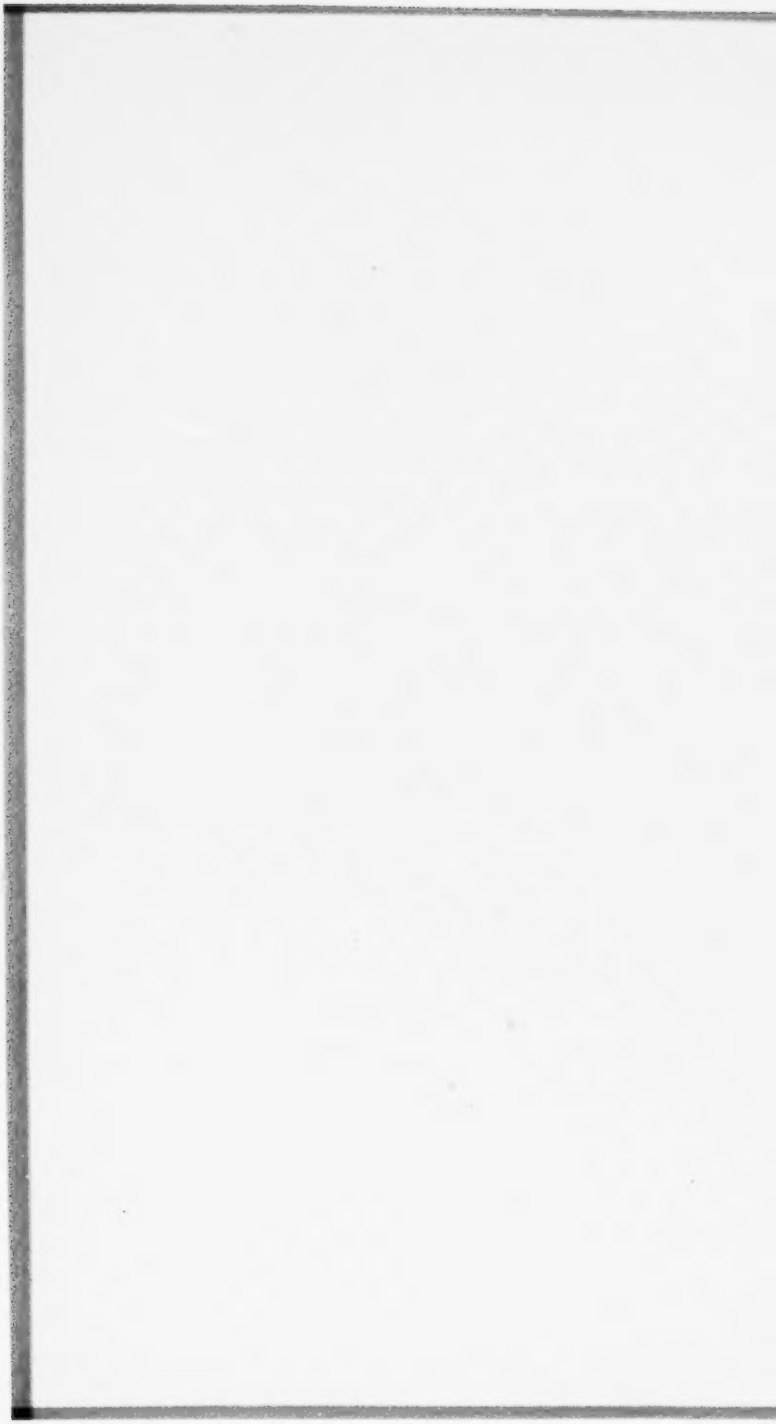

1 The President of the United States of America to John J. Harrington, Dennis A. Harrington, Sol Sayles Company, and Sayles, Zahn Company, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America, for the southern district of New York, in the second circuit, in equity, on the first Monday of October, A. D. 1904, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Bertha Doctor and Katherine Sayles, and do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, on the 8th day of September, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America, the one hundred and twenty-ninth.

JOHN A. SHIELDS, Clerk.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants, 30 Broad St.

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of October, 1904, or the bill will be taken *pro confesso* against them.

J. A. S., Clerk.

2 I hereby certify, that on the 8th day of Sept. 1904 at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named defendant Milton C. Bradley, at 128 Sixth Ave. N. Y. city individually by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, that on the 8th day of Sept. 1904, at the city of New York, in my district, I served the within subpœna in equity upon the within-named defendants Sayles Zahn Co. at 128 Sixth Ave. N. Y. city, by exhibiting to Milton C. Bradley as secretary of Sayles, Zahn Co. the within original, and at the same time leaving with him a copy thereof.

WM. HENKEL,
United States Marshal, Southern District of New York.

Dated Sept. 9, 1904.

I hereby certify, that on the 9th day of Sept. 1904, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named defendant John J. Harrington at 770 First Ave N. Y. city individually by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, that on the 9th day of Sept. 1904, at the city of New York, in my district, I served the within subpœna in equity upon the within-named defendants Sayles, Zahn Co. at 770 First Ave. N. Y. by exhibiting to John J. Harrington as treasurer of the Sayles, Zahn Company the within original, and at the same time leaving with him a copy thereof.

WM. HENKEL,
United States Marshal, Southern District of New York.

Dated Sept. 9, 1904.

U. S. circuit court, southern district of New York, filed Sep. 9, 1904. John A. Shields, clerk.

I further certify, that on the 8th day of Sept. 1904, at the city of New York, in my district, I served the within subpœna in
3 equity upon the within-named defendant Sol Sayles Company at 128 Sixth Ave. by exhibiting to Milton C. Bradley as secretary of said Sol Sayles Company the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated November 16, 1904.
Amended return.

4 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Bertha Doctor and Katherine Sayles, being each of them a citizen of the State of New Jersey, bring this their bill against John J. Harrington and Dennis A. Harrington, each of them being a citizen of the State of New York and an inhabitant of the southern district of New York, and Sol Sayles Company and Sayles, Zahn Company,

each being a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office at the city of New York in said State, and an inhabitant of the southern district of New York, and thereupon your orators complain and say:

First. The complainant Bertha Doctor now is and at the time of the commission of the grievances hereinafter set forth was an inhabitant, resident and citizen of Madison, Morris county, New Jersey, and the complainant Katherine Sayles now is and at the time of the commission of the grievances hereinafter set forth was an inhabitant, resident and citizen of Berkeley Heights, Long Hill, Morris county, New Jersey.

Second. The defendants John J. Harrington and Dennis
5 A. Harrington now are and each of them is an inhabitant, resident and citizen of the State of New York and the southern district thereof. The defendant Sol Sayles Company is a citizen of the State of New York, being a corporation organized and incorporated by and existing under the laws of the State of New York. The defendant Sayles, Zahn Company is a citizen of the State of New York, being a corporation duly organized and incorporated by and existing under the laws of the State of New York. Each of said corporations has its principal office in the city of New York in said State and is an inhabitant of the southern district of New York.

Third. The defendant Sol Sayles Company was organized in the year 1896 for the purpose of carrying on the business of buying, selling and dealing in meats, poultry and vegetables and other merchandise at wholesale and retail, and to supply hotels and steamships in the State of New York and neighboring States. It was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars per share, and the business carried on by it was profitable and its stock was at the time of its incorporation and has ever since continued to be of great value.

Fourth. The complainant Bertha Doctor is the owner of two hundred shares of said capital stock, and the complainant Katherine Sayles of three hundred shares thereof, and the defendants John J. Harrington and Dennis A. Harrington own or control the remaining five hundred shares thereof.

Fifth. By an arrangement made between the defendant John J.
Harrington and the predecessor in title of the complainant
6 Bertha Doctor, six shares of the stock belonging to her were loaned to the said defendant at his special instance and request, in order that he might exercise control over the said corporation until such time as the owner of said shares of stock should require their return in accordance with the arrangement made with the said John J. Harrington.

Sixth. The defendant John J. Harrington, exercising the power thus conferred upon him, has continued to control the defendant

Sol Sayles Company and has directed the management of its affairs and dictated its policy and has caused to be elected as its directors himself and the defendant Dennis A. Harrington, and also one John P. Nelson, one Milton C. Bradley and one Solomon Sayles, and caused the said Solomon Sayles to be chosen as the president of the said corporation, and the said Sayles thereafter acted as such president, but under the complete domination of the defendant John J. Harrington. The said Nelson and Bradley now are and for the past seven years have been in the employ of the defendants John J. Harrington and Dennis A. Harrington in the business carried on by them individually.

Seventh. On or about the 26th day of January, 1898, the defendant John J. Harrington caused to be organized the defendant Sayles, Zahn Company, for the purpose of taking over the business of the defendant Sol Sayles Company and of consolidating the same with a similar business heretofore conducted in the city of New York by one Henry Zahn, and in accordance with the plan of the said defendant John J. Harrington the defendant Sol Sayles Company on or about the first day of February, 1898, sold, assigned, transferred and set over unto the defendant Sayles, Zahn Company all
7 the good-will, machinery, tools, implements, furniture, fixtures, signs, safes, wagons, horses and harness belonging to and used by said defendant Sol Sayles Company in its business, in consideration of the issuance and delivery to the defendant Sol Sayles Company by the defendant Sayles, Zahn Company of fifty thousand dollars par value of the fully paid capital stock of the defendant Sayles, Zahn Company of a total authorized issue of two hundred thousand dollars of capital stock, and at the direction of the defendant John J. Harrington the said fifty thousand dollars of capital stock of the defendant Sayles, Zahn Company were issued for the benefit of the defendant Sol Sayles Company as follows: Five shares thereof in the name of Solomon Sayles, five shares thereof in the name of John P. Nelson aforesaid, five shares thereof in the name of Jacob L. Sayles, five shares thereof in the name of the defendant John J. Harrington, and four hundred and eighty shares thereof in the name of the aforesaid Milton C. Bradley. The said Solomon Sayles and Jacob L. Sayles immediately after the issuance of the said stock to them endorsed the certificates thereof and delivered the said shares of stock to the defendant John J. Harrington for and on behalf of the defendant Sol Sayles Company.

Eighth. The defendant Sol Sayles Company subscribed for fifty thousand dollars additional of the capital stock of the defendant Sayles, Zahn Company, agreeing to pay therefor at such times and in such amounts as the board of directors of the Sayles, Zahn Company should make a call therefor, and the complainants allege, on information and belief, that thereafter said subscription was duly paid and a certificate of stock issued to said Sol Sayles Company for five hundred shares.

Ninth. On or about the said first day of February, 1898,
8 the aforesaid Henry Zahn sold, assigned, transferred and set over unto the defendant Sayles, Zahn Company all the goodwill, machinery, tools, implements, furniture, fixtures, signs, safes, wagons, horses and harness belonging to him and appertaining to his business, receiving therefor fifty thousand dollars par value of the fully paid up stock of the defendant Sayles, Zahn Company.

Tenth. The defendant Sayles, Zahn Company has five directors, who for some years past have been the defendant John J. Harrington and the aforesaid Milton C. Bradley, John P. Nelson, Solomon Sayles and Henry Zahn, and the said defendant John J. Harrington has exercised control over and has dominated the said board of directors and controls its management.

Eleventh. The business of the defendant Sayles, Zahn Company has been profitable since its organization, its net profits during the six years which have elapsed since its incorporation aggregating upwards of three hundred thousand dollars.

Twelfth. Subsequent to the organization of the defendant Sayles, Zahn Company the defendant Sol Sayles Company conducted no active business except to collect accounts and bills receivable and other assets which it retained after the incorporation of the defendant Sayles, Zahn Company and the transfer to said corporation of the assets hereinbefore referred to. The assets so retained were of great value and have never been accounted for by the defendants herein or any of them.

Further complaining of the defendants herein the complainants allege upon information and belief:

Thirteenth. On or about the first day of February, 1899,
9 the defendants John J. Harrington and Dennis A. Harrington, who were copartners carrying on business under the firm name and style of J. J. Harrington & Company, combining, confederating and conspiring together, and with divers persons at present unknown to the complainants whose names when discovered the complainants pray that they may be at liberty to insert herein with apt words to charge them as parties defendant hereto, and contriving to wrong and injure the complainants in the premises, and with the purpose and intent to cheat and defraud the complainants herein out of their interest in the capital stock of the defendant Sol Sayles Company and out of the interest to which the defendant Sol Sayles Company was entitled in the assets of the defendant Sayles, Zahn Company, wrongfully and fraudulently caused the defendant Sol Sayles Company, which was under their domination and control as aforesaid, to execute and deliver to them, without any consideration whatsoever, its promissory notes aggregating twenty-three thousand seven hundred dollars, which were utterly fictitious and were devised by the defendants Harrington for the fraudulent purposes herein set forth.

Fourteenth. Thereafter and on or about the third day of October, 1902, the defendants John J. Harrington and Dennis A. Harring-

ton, in furtherance of their wrongful and fraudulent scheme aforesaid, caused to be instituted an action in the supreme court of the State of New York against the defendant Sol Sayles Company for the purpose of recovering a judgment against said corporation for the amount of the said promissory notes and the interest which was alleged to have accrued thereon. The complaint in said action was signed by one Philip J. Britt "as attorney for defendant." In truth and in fact the said Britt had for many years been the attorney and counsel for the defendants John J. Harrington and Dennis A. Harrington, was the attorney and counsel for the defendant Sol Sayles Company, and for the defendant Sayles, Zahn Company.

Fifteenth. The summons and complaint in said action were served on Solomon Sayles, the president of the defendant Sol Sayles Company, in the presence of the defendant John J. Harrington. The said Sayles was ignorant of the contents of the said papers, did not and was unable to read the same on account of his defective eyesight, and at the request of the defendant John J. Harrington, and in reliance upon his promise to attend to the matter, delivered to him the said summons and complaint immediately upon the service thereof and without having had any opportunity to confer with counsel with regard thereto or to take any measures to investigate the subject matter thereof.

Sixteenth. Thereupon the defendant John J. Harrington well knowing that the said Sayles and the defendant Sol Sayles Company were in utter ignorance of the nature of the said action and for the purpose of carrying out his fraudulent intent aforesaid, omitted to interpose any defence to the said action or to inform the stockholders of the defendant Sol Sayles Company, and particularly the complainants herein, of the institution thereof, and caused the said defendant Sol Sayles Company to default in said action, and thereafter, and on the 28th day of October, 1902, caused a judgment to be entered in the office of the clerk of the county of New York in favor of the defendants John J. Harrington and Dennis A. Harrington and against the defendant Sol Sayles Company for the sum of twenty-seven thousand three hundred and fifty-seven and 26/100 dollars, and immediately thereafter caused to be issued to the sheriff of the county of New York an execution directing the said
11 sheriff to collect the amount of said judgment out of the property and assets of the defendant Sol Sayles Company, and the sheriff, acting under the instructions of the said defendants John J. Harrington and Dennis A. Harrington and their attorney Philip J. Britt, thereupon and on said 28th day of October, 1902, called upon the aforesaid Milton C. Bradley and demanded of him the delivery of the certificates of stock in the Sayles, Zahn Company which belonged to the defendant Sol Sayles Company, whereupon the said Bradley, acting under the instructions of the defendants John J. Harrington and Dennis A. Harrington and of the said Britt, delivered to the said sheriff certificates representing one thou-

sand shares of the capital stock of the defendant Sayles, Zahn Company belonging to the defendant Sol Sayles Company of the par value of one hundred dollars per share, to wit, certificate No. 8 for five hundred shares; certificate No. 11 for five shares; certificate No. 12 for five shares; certificate No. 13 for five shares; certificate No. 14 for five shares; certificate 15 for four hundred and eighty shares, and also two bonds, each of the par value of one thousand dollars, being consolidated mortgage five per cent. bonds of the New Jersey Steamboat Company, numbered respectively 201 and 202, with thirty-eight coupons of the par value of twenty-five dollars each attached.

Seventeenth. On the 10th day of November, 1902, in furtherance of the aforesaid fraudulent conspiracy, the defendants John J. Harrington and Dennis A. Harrington caused the sheriff of the county of New York to sell all the right, title and interest of the defendant Sol Sayles Company in the aforesaid certificates of stock and bonds and caused the same to be purchased at said sale for their own benefit, and wrongfully and fraudulently concealed from the
12 complainants herein and from the said Solomon Sayles, and from all persons connected with the defendant Sol Sayles Company, other than the defendants Harrington and the aforesaid Nelson and Bradley, the facts aforesaid, and the complainants and the said Solomon Sayles learned of the aforesaid facts for the first time on or about the first day of July, 1904.

Eighteenth. The shares of stock so acquired by the defendants Harrington at the sale aforesaid were at the time of said sale, as the said defendants well knew, and have ever since continued to be, of the value of upwards of two hundred thousand dollars.

Nineteenth. Immediately upon being informed of the aforesaid facts the complainants caused a demand to be made upon the defendants John J. Harrington and Dennis A. Harrington that they transfer the said shares of stock and the said bonds to the defendant Sol Sayles Company, and that they cause to be issued to the complainants herein certificates representing their interests in the said shares of stock, but the said defendants have refused to comply with the said demand and have insisted that the said shares of stock and the said bonds are their personal and individual property, that neither the defendant Sol Sayles Company nor the complainants herein or either of them have any right, title or interest in the said shares of stock or the said bonds or any part thereof.

Twentieth. The complainants were and each of them was a shareholder of the defendant Sol Sayles Company at the time of the transactions herein complained of. This suit is not a collusive one to confer upon a court of the United States jurisdiction of a
13 case of which it would not otherwise have cognizance. The complainants are unable to secure any corporate action on the part of the defendant Sol Sayles Company to redress the wrongs hereinbefore set forth, nor are they able to obtain any redress at the hands of the stockholders of the said defendant Sol Sayles Company.

The board of directors of said corporation is under the absolute control and domination of the defendant John J. Harrington and the said Harrington, by reason of having possession of a majority of the capital stock of the said corporation, likewise controls the action of the stockholders. Although requested for information with regard to the facts hereinbefore set forth he has refused to give any information with regard thereto and has declined to redress the wrongs of which complaint is herein made or to give to the complainants any opportunity to lay before the board of directors or the stockholders of the defendant Sol Sayles Company the facts herein set forth.

Twenty-first. The complainants further allege that they greatly fear that the defendants John J. Harrington and Dennis A. Harrington will attempt to dispose of the aforesaid shares of stock and bonds to their injury, and that they will attempt to cause them to be transferred on the books of the defendant Sayles, Zahn Company in such a way as to elude the pursuit of the complainants and in order that the said defendants Harrington may enjoy the fruits of their aforesaid fraud, and that unless restrained and enjoined by this honorable court the defendant Sayles, Zahn Company will permit a transfer of said shares of stock to be made upon its books to the nominees and transferees of the defendants Harrington, all to the irreparable injury of the complainants.

14 Twenty-second. The defendants Harrington and the defendant Sol Sayles Company have failed and refused to account to the complainants with respect to the business and assets of the said corporation since the organization of the defendant Sayles, Zahn Company, and with respect to the dividends earned and paid on the shares of stock in the defendant Sayles, Zahn Company belonging to the defendant Sol Sayles Company and which are now claimed by the defendants Harrington by reason of the fraudulent schemes, devices and acts hereinbefore referred to.

Twenty-third. All of which acts, doings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of the complainants in the premises. In consideration whereof and for as much as the complainants are remediless in the premises at and by the strict rules of common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end that said complainants may have such relief, they humbly pray this honorable court that (1) the judgment obtained by the defendants Harrington against the defendant Sol Sayles Company in the supreme court of the State of New York on the 28th day of October, 1902, be declared fraudulent, null and void, and that the same be vacated and set aside; (2) that the levy and sale under the execution issued on the aforesaid judgment to the sheriff of the county of New York be likewise declared fraudulent, null and void and be vacated and set aside; (3) that the defendants Harrington be required to deliver to the defendant Sol Sayles Company the shares of stock and the bonds so sold under the aforesaid execution,

and that thereupon the defendant Sol Sayles Company be required to distribute the said certificates of stock of the defendant Sayles,
15 Zahn Company to the several stockholders of the defendant Sol Sayles Company in accordance with their respective interests therein, to wit, to the complainant Bertha Doctor two hundred shares of said capital stock, to the complainant Katherine Sayles three hundred shares thereof, and the remainder to the remaining stockholders of the defendant Sol Sayles Company; (4) that the defendant Sol Sayles Company account to the complainants for all dividends received by it and to which it was entitled on account of the shares held by it in the Sayles, Zahn Company, and for all of its acts with regard thereto; that the defendants John J. Harrington, Dennis A. Harrington, and each of them, be required to account for all shares of stock of the Sayles, Zahn Company which have come into the possession of them or either of them, for all dividends received thereon or upon any portion of said shares of stock, for the bonds of the New Jersey Steamboat Company, for all interest received on account of said bonds or the coupons attached thereto, for all moneys received and collected from accounts, bills receivable and other assets belonging to the defendant Sol Sayles Company and with respect to the business and affairs of said defendant Sol Sayles Company; (5) that the defendants John J. Harrington, Dennis A. Harrington and Sol Sayles Company, and each of them, and each of their attorneys, agents and the directors, officers, employees and servants of the said corporation be severally restrained and enjoined by both the temporary and permanent decrees of this honorable court, from transferring to any person, firm, or corporation, other than to the complainants herein, any of the shares of stock of the Sayles, Zahn Company, or the bonds of the New Jersey Steamboat Company, hereinbefore described, or any interest in the said shares of stock or the
16 said bonds, or in the dividends accruing or accrued thereon, and from in any manner interfering therewith; or any of the six shares of stock of the Sol Sayles Company, or any dividends accruing or accrued thereon, or any interest in such shares of stock or dividends, which were received by the defendant John J. Harrington as hereinbefore alleged; (6) and that the defendant Sayles, Zahn Company and each and every of the officers, directors, agents, employees, servants, attorneys and representatives thereof be enjoined and restrained by both the temporary and permanent decrees of this honorable court, from permitting any of its shares of stock heretofore standing in the name of the Sol Sayles Company, or of the defendants John J. Harrington, Dennis A. Harrington, John P. Nelson or Milton C. Bradley, to be transferred to any person, firm or corporation until the further decree of this honorable court in the premises; that they may have not only the writ of injunction of this honorable court, but also that a writ of subpœna be granted directed to the defendants hereinbefore named, requiring them and

each of them to appear on a certain day therein to be named before this honorable court, then and there full, true and direct answers to make to all and singular the premises, but not under oath, which is hereby expressly waived, and further to perform and abide by such further order or decree as to the court may seem meet; that the complainants may have such other and further relief as may be equitable, just and proper in the premises.

BERTHA DOCTOR,
KATHERINE SAYLES,
Complainants.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants.

Office and post office address: 30 Broad street, borough of Manhattan, New York city.

17 STATE OF NEW JERSEY, } ss.:
County of Morris, }

Bertha Doctor and Katherine Sayles, being each duly sworn according to law, severally depose and say:

I am one of the complainants named in and have read the foregoing bill of complaint. The same is true of my own knowledge except as to such matters as are therein stated on information and belief, and as to such statements I believe it to be true.

(Signed) BERTHA DOCTOR,
" KATHERINE SAYLES.

Subscribed and sworn to before me this 27th day of August, 1904.

NATHANIEL C. TOMS,
[SEAL.] Master in Chancery of New Jersey.

STATE OF NEW JERSEY, } ss.:
County of Morris, }

I, Daniel S. Voorhees, clerk of the county of Morris, and also clerk of the court of common pleas holden in and for said county, the same being a court of record, do hereby certify that Nathaniel C. Toms by whom the foregoing affidavit was taken and certified was, at the time of taking such affidavit, a master in chancery of the State of New Jersey, residing in said county, duly commissioned and sworn, and fully authorized by the laws of the State of New Jersey to take the same, and also the acknowledgments and proofs of deeds, mortgages and conveyances of real estate in said county and State, and that I am well acquainted with the handwriting of said master in chancery, and verily believe that the name subscribed to the said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of court at Morristown, this 29 day of August 1904.

[SEAL.] (Signed) DANIEL S. VOORHEES.

18 (Endorsed:) Circuit court of the United States, southern dist. N. Y.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, defendants.—Bill of complaint.—Guggenheimer, Untermyer & Marshall, attorneys for complainants, No. 30 Broad street, city of New York.—U. S. circuit court, southern district of New York, Filed Sep. 8, 1904, John A. Shields, clerk.

19 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

Please take notice, that the defendants, John J. Harrington and Dennis A. Harrington, appear in this action and that I am retained as solicitor for said defendants therein, in accordance with the rules and practice of this court.

Dated borough of Manhattan, city of New York, October 3rd, 1904.

Respectfully, PHILIP J. BRITT,
Solicitor for Defendants, John J. Harrington and Dennis A. Harrington.

Office & P. O. address, No. 27 William street, borough of Manhattan, New York city.

To the circuit court of the United States, for the southern district of New York; Messrs. Guggenheimer, Untermyer & Marshall, solicitors for complainants, office & P. O. address, No. 30 Broad street, borough of Manhattan, New York city.

(Endorsed:) In the circuit court of the United States, for the southern district of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles Zahn Company, defendants.—Appearance on behalf of defendants, John J. Harrington and Dennis A. Harrington.—Philip J. Britt, att'y for def'ts Harrington, No. 27 William St. New York city.—U. S. circuit court, southern district of New York, Filed Oct. 3, 1904, John A. Shields, clerk.

20 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

Please take notice, that the defendant, Sayles Zahn Company, appears in this action, and that I am retained as solicitor for said defendant therein, in accordance with the rules and practice of this court.

Dated borough of Manhattan, city of New York, October 3rd, 1904.

Respectfully, ROBERT O'BYRNE,
Solicitor for Defendant, Sayles Zahn Co.

Office & P. O. address, No. 27 William street, borough of Manhattan, New York city.

To the circuit court of the United States, for the southern district of New York; Messrs. Guggenheimer, Untermyer & Marshall, solicitors for complainants, office & P. O. address, No. 30 Broad street, borough of Manhattan, New York city.

(Endorsed:) In the circuit court of the United States, for the southern district of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, defendants.—Appearance on behalf of defendant, Sayles Zahn Co.—Robert O'Byrne, att'y for def't, Sayles, Zahn Company, 27 William St. New York city.—U. S. circuit court, southern district of New York, Filed Oct. 3, 1904, John A. Shields, clerk.

21 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

The defendants John J. Harrington and Dennis A. Harrington now and at all times hereafter saving to themselves all and all manner of benefit and exception or otherwise that can or may be had or

taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much therein as these defendants are advised it is material or necessary for them to make answer to, jointly and severally, answering say:

First. That as to whether or not the complainant Bertha Doctor now is and at the times mentioned in the bill of complaint herein was an inhabitant, resident and citizen of Madison, Morris county, New Jersey, and as to whether or not the complainant Katherine Sayles now is and at the times alleged in the bill of complaint was an inhabitant, resident and citizen of Berkeley Heights, Long Hill, Morris county, New Jersey, these defendants have not sufficient information on which to base a belief, and therefore deny the same.

Second. These defendants admit each and every allegation made and contained in paragraphs "second" and "third" of the bill of complaint herein, except the allegation contained in the "third" paragraph to the effect, that the business carried on by the
22 Sol Sayles Company was profitable, and that its stock was at the time of its incorporation and has ever since continued to be of great value, which these defendants deny.

Third. That as to whether or not the complainant Bertha Doctor is the owner of two hundred shares of the capital stock of Sol Sayles Company, and as to whether or not Katherine Sayles is the owner of three hundred shares thereof, as set out in the "fourth" paragraph of the bill of complaint, these defendants have not sufficient information on which to base a belief, and therefore deny the same, and allege the truth to be, that these defendants John J. Harrington and Dennis A. Harrington own and control, and have since the year 1897 owned and controlled, five hundred and five shares of the capital stock of said company.

Fourth. These defendants deny that there was an arrangement made between the defendant John J. Harrington and the predecessor in title of the complainant Bertha Doctor by which six shares of the capital stock of said company belonging to her were loaned to said defendant, at his instance and request, in order that he might exercise control over the said corporation until such time as the owner of such shares should require their return in accordance with said arrangement, as alleged in the "fifth" paragraph of the bill of complaint herein.

Fifth. These defendants deny each and every allegation made and contained in the "sixth" paragraph of the bill of complaint herein, and allege the truth to be, that ever since the year 1897 and up to the present time the directors of said Sol Sayles Company have been Solomon Sayles, Jacob L. Sayles, John P. Nelson and each of these defendants, and that when elected directors said per-
23 sons were always elected by the unanimous vote of the capital stock represented at the meeting of stockholders. These defendants further allege the truth to be, that neither said Nelson nor Milton C. Bradley, in said bill of complaint mentioned, are now or

ever have been during the past seven years, in the employ of these defendants in the business carried on by them individually.

Sixth. These defendants admit that on or about the 26th day of January, 1898, the defendant Sayles Zahn Company was organized for the purpose of taking over the business of the defendant Sol Sayles Company and of consolidating the same with the similar business theretofore conducted in the city of New York by one Henry Zahn, and that on or about the 1st day of February, 1898, the defendant Sol Sayles Company sold, assigned, transferred and set over unto the defendant Sayles Zahn Company all the good will, machinery, tools, implements, furniture, fixtures, signs, safes, wagons, horses and harness belonging to and used by said Sol Sayles Company in its business, in consideration of the issuance and delivery to the defendant Sol Sayles Company by the defendant Sayles Zahn Company of $50,000 par value of the fully paid capital stock of the defendant Sayles Zahn Company out of a total authorized issue of $200,000 of capital stock. But these defendants deny that said $50,000 of capital stock of the Sayles Zahn Company was issued upon the direction of the defendant John J. Harrington in the manner described in the "seventh" paragraph of the bill of complaint herein, and also that Solomon Sayles and Jacob L. Sayles immediately after the issuance of said stock to them endorsed the certificates thereof and delivered the same to the defendant John J. Harrington for and on behalf of the defendant Sol Sayles Company, and as to those matters allege the truth to be, that the capital stock of the Sayles Zahn Company to the amount of $50,000 was
24 issued at the time mentioned in the bill of complaint to the persons and in the manner directed by the Sol Sayles Company, and that said Solomon Sayles and Jacob L. Sayles delivered the certificates of stock issued to them to the secretary of the defendant Sol Sayles Company.

Seventh. These defendants admit the allegations made and contained in paragraphs "eighth" and "ninth" of the bill of complaint herein.

Eighth. These defendants admit the allegations made in paragraph "tenth" of the bill of complaint, except the allegations that Milton C. Bradley was a director of the defendant Sayles Zahn Company, and that the defendant John J. Harrington exercised control over and has dominated the said board of directors and controls its management, which allegations these defendants deny.

Ninth. These defendants deny the allegations contained in the "eleventh" paragraph of the bill of complaint herein.

Tenth. These defendants admit the allegations contained in the "twelfth" paragraph of the bill of complaint herein, except the allegation therein made that the assets retained by the Sol Sayles Company after the organization of the Sayles Zahn Company have never been accounted for by the defendants, or any of them, which allegation these defendants deny, and allege the truth to be, that while the assets retained by said Sol Sayles Company were of great

value and were all collected by said Sol Sayles Company, the debts and liabilities of said Sol Sayles Company were largely in excess of its assets, and that all of said assets were fully accounted for.

Eleventh. These defendants deny each and every allega-
25 tion made and contained in paragraph "thirteenth" of the bill of complaint herein, except the allegation that these defendants were on or about the 1st day of February, 1899 co-partners carrying on business under the firm name and style of J. J. Harrington & Company, which allegation these defendants admit; and these defendants further allege, that they are at present and at all the times mentioned in the bill of complaint herein were such co-partners transacting business under said firm name and style in the city of New York.

Twelfth. These defendants deny that on or about the 3rd day of October, 1902 they, in furtherance of a wrongful or fraudulent scheme, as alleged in the "fourteenth" paragraph of the bill of complaint herein, caused to be instituted an action in the supreme court of the State of New York against the defendant Sol Sayles Company, and allege the truth to be, that on or about said day these defendants began an action against the defendant Sol Sayles Company in the supreme court of the State of New York to recover a judgment against said corporation for the amount of certain promissory notes and interest thereon, which were made, executed and delivered by said Sol Sayles Company to these defendants for a good and valuable consideration. These defendants further allege, that if the complaint in said action was signed by one Philip J. Britt "as attorney for defendant," it was the result of but a clerical or typographical error, and that said Philip J. Britt was in fact the attorney for the plaintiffs in said action, and that at said time and for a long time prior thereto said Philip J. Britt had ceased to be the attorney for the defendant therein Sol Sayles Company.

26 Thirteenth. Upon information and belief, these defendants deny each and every allegation made and contained in paragraph "fifteenth" of the bill of complaint herein, except the allegation that the summons and complaint in the aforesaid action of these defendants against the Sol Sayles Company was served on Solomon Sayles, the president of the defendant Sol Sayles Company, which allegation these defendants admit.

Fourteenth. These defendants deny the allegations made and contained in the "sixteenth" paragraph of the bill of complaint herein, except the allegations that on the 28th day of October, 1902 these defendants entered a judgment in the office of the clerk of the county of New York in the aforesaid action in favor of these defendants and against said Sol Sayles Company for the sum of $27,357.26, and that they caused an execution to be issued upon said judgment to the sheriff of the county of New York, directing said sheriff to collect the amount of said judgment out of the property of the defendant Sol Sayles Company, and that said sheriff subsequently levied under said execution, in accordance with the provisions of

the laws of the State of New York in regard thereto, upon property of said defendant Sol Sayles Company, which is specifically described and designated in said "sixteenth" paragraph of the bill of complaint herein, by taking the same from the possession of said defendant Sol Sayles Company and Milton C. Bradley, which allegations these defendants admit, and these defendants further allege, that at the time of the aforesaid levy by the sheriff of the county of New York under the execution aforesaid, said Milton C. Bradley was the assistant secretary and treasurer of the defendant Sol Sayles Company.

Fifteenth. These defendants deny each and every allegation made and contained in paragraphs "seventeenth" and "eigh-
27 teenth" of the bill of complaint herein, and allege the truth to be, that on the 10th day of November, 1902, the sheriff of the county of New York, under the execution aforesaid, duly sold all the right, title and interest of the defendant Sol Sayles Company in and to the aforesaid stock and bonds, in conformity and after duly complying with all the provisions of the laws of the State of New York in regard to the sale of personal property by a sheriff under an execution, and after these defendants had caused notice of said sale to be published in a daily newspaper published upon that day in the city of New York, to wit, the New York Times, said notice containing a statement of the time and place of sale and a description of the property to be sold, and that these defendants duly and properly and without fraudulent intent or design purchased said property at said sheriff's sale.

Sixteenth. These defendants have been informed and believe that about three or four months ago a demand was made upon them that they transfer the aforesaid shares of stock and the aforesaid bonds to the defendant Sol Sayles Company, and admit that they have refused to comply with said demand, and have insisted that said shares of stock and said bonds are their personal and individual property, and that neither the defendant Sol Sayles Company nor the complainants herein, nor either of them, have any right, title or interest in said shares of stock or the said bonds or any part thereof.

Seventeenth. These defendants deny that they have any knowledge or information upon which to base a belief as to the allegations made and contained in the "twentieth" and "twenty-first" paragraphs of this bill of complaint herein, and therefore deny the same.

Eighteenth. These defendants deny the allegations made and contained in the "twenty-second" paragraph of the bill of com-
28 plaint herein.

Nineteenth. These defendants, further answering the bill of complaint herein, further say, that they are advised and humbly submit, that neither of the complainants have any interest in the matters in question in this suit, nor in the matters aforesaid, so as to entitle them or either of them to sustain this suit, and these defend-

ants crave the same benefit from this defense as if they had demurred to said bill.

Twentieth. These defendants, further answering the bill of complaint herein, further say, that they are advised and humbly submit, that it appears by the complainants' own showing by the said bill, that they are not entitled to the relief prayed by said bill against these defendants, and that the bill of complaint of the complainants herein should be dismissed, because if any right of action exists in favor of the complainants against these defendants, arising out of the matters and things referred to in the bill of complaint herein, said complainants have an adequate remedy at law therefor, and these defendants crave the same benefit from this defense as if they had demurred to said bill.

Twenty-first. And these defendants further deny all and all manner of unlawfull combination, fraud, fraudulent intent and conspiracy whatsoever wherewith they and each of them are by the said bill of complaint charged; without this, there is any other matter, cause or thing in complainants' said bill of complaint contained material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly pray to be
29 hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN J. HARRINGTON,
DENNIS A. HARRINGTON,
Defendants.

PHILIP J. BRITT,
Solicitor for Defendants,
John J. Harrington and Dennis A. Harrington.

Office & P. O. address, # 27 William street, borough of Manhattan, New York city..

I hereby certify that the foregoing answer is, in my opinion, well founded in point of law.

Dated, November 7, 1904.

PHILIP J. BRITT,
Solicitor for Defendants, John J. Harrington and Dennis A. Harrington.

30 STATE OF NEW YORK, }
County of New York, Southern } *ss.:*
District of New York, }

John J. Harrington and Dennis A. Harrington, being each duly sworn, severally depose and say:

I am one of the above named defendants; so much of the fore-

going answer as concerns my own acts and deeds is true to the best of my knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

JOHN J. HARRINGTON.
DENNIS A. HARRINGTON.

Sworn to before me, this 5th day of November, 1904.

ROBERT O'BYRNE,
Notary Public, Kings Co.,
Cert. Filed in N. Y. Co.

(Endorsed:) In the circuit court of the United States, for the southern district of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles Zahn Company, defendants.—Answer of defendants John J. Harrington and Dennis A. Harrington.—Philip J. Britt, att'y for def'ts Harrington, No. 27 William St. New York city.—U. S. circuit court, southern district of New York, Filed Nov. 7, 1904, John A. Shields, clerk.

31 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

The defendant Sayles Zahn Company now and at all times hereafter saving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

First. That this defendant is a corporation duly organized and existing under the laws of the State of New York, and that it has a capital stock of $200,000. divided into two thousand shares of the par value of $100. per share, and that fifteen hundred shares of the authorized capital stock has been issued, and that it is engaged in the business of buying, selling and dealing in meats, poultry, vegetables and other merchandise at wholesale and retail, and the supplying of hotels and steamships in and around the State of New York.

Second. That this defendant is a stranger to all and singular the matters and things stated and alleged in the complainants' bill of

complaint, and therefore leaves these complainants to make such proof thereof as they shall be able to produce.

32 SAYLES, ZAHN COMPANY,
[SEAL.] By MILTON C. BRADLEY, Sec't'y.

ROBERT O'BYRNE,
Solicitor for Defendant,
Sayles, Zahn Company,

Office & P. O. address, # 27 William street, borough of Manhattan, New York city.

STATE OF NEW YORK,
County of New York, Southern } ss:
District of New York,

On this 7th day of November, 1904, before me personally appeared Milton C. Bradley, the secretary of the Sayles Zahn Company, one of the defendants above named, who being by me duly sworn, did depose and say, that he is the secretary of the Sayles Zahn Company, and familiar with its business; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

MILTON C. BRADLEY.

Sworn to before me, November 7th, 1904.
G. A. C. BARNETT,
[SEAL.] Notary Public, No 27, N. Y. Co.

(Endorsed:) In the circuit court of the United States, for the southern district of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Sol Sales Company and Sayles, Zahn Company, defendants.—Answer of
33 defendant Sayles Zahn Company.—Robert O'Byrne, att'y for def't Sayles Zahn Company, 27 William St. New York city.—U. S. circuit court, southern district of New York, Fled Nov. 7, 1904, John A. Shields, clerk.

34 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

The replication of the above named complainants to the answer of the above named defendants, John J. Harrington and Dennis A. Harrington.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto sayeth that they do and will ever maintain and prove their said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly — as in and by their said bill they have already prayed.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants.

35 UNITED STATES OF AMERICA,
District of New Jersey, County of Morris, } *ss.:*

Katherine Sayles, being duly sworn, deposes and says: I am one of the complainants herein; I have read the foregoing replication and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

KATHERINE SAYLES.

Sworn to before me this 12th day of November, 1904.

[SEAL.]

NATHANIEL C. TOMS,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, County of Morris, } ss:

I, Daniel S. Voorhees, clerk of the county of Morris, and also clerk of the court of common pleas holden in and for said county, the same being a court of record, do hereby certify that Nathaniel C. Toms by whom the foregoing affidavit was taken and certified was, at the time of taking such affidavit, a master in chancery of the State of New Jersey, residing in said county, duly commissioned and sworn and fully authorized by the laws of the State of New Jersey to take the same, and also the acknowledgements and proofs of deeds, mortgages and conveyances of real estate in said county and State, and that I am well acquainted with the handwriting of said master in chancery, and verily believe that the name subscribed to the said certificate is genuine.

36 In testimony whereof, I have hereunto set my hand and affixed the seal of court at Morristown, this 14th day of November, 1904.

[SEAL.] DANIEL S. VOORHEES, Clerk.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor and Katherine Sales, complainants, against John J. Harrington and others, defendants (in equity)—Replication to answer of defendants John J. Harrington and Dennis A. Harrington, Guggenheimer, Untermyer & Marshall, solicitors for defendants, No. 30 Broad St. city of New York.—U. S. circuit court, southern district of New York, Filed Nov. 15, 1904, John A. Shields, clerk.

37 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

The replication of the above named complainants to the answer of the above named defendant, Sayles, Zahn Company.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that they do and will ever maintain and prove their said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and

that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, transversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly — as in and by their said bill they have already prayed.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants.

38 UNITED STATES OF AMERICA, District of New Jersey, County of Morris, } ss.:

Katherine Sayles, being duly sworn, deposes and says: I am one of the complainants herein; I have read the foregoing replication and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

KATHERINE SAYLES.

Sworn to before me this 12th day of November, 1904.

NATHANIEL C. TOMS,
[SEAL.] Master in Chancery of New Jersey.

STATE OF NEW JERSEY, County of Morris, } ss.:

I, Daniel S. Voorhees, clerk of the county of Morris, and also clerk of the court of common pleas holden in and for said county, the same being a court of record, do hereby certify that Nathaniel C. Toms by whom the foregoing affidavit was taken and certified was, at the time of taking such affidavit, a master in chancery of the State of New Jersey, residing in said county, duly commissioned and sworn and fully authorized by the laws of the State of New Jersey to take the same, and also the acknowledgements and proofs of deeds, mortgages and conveyances of real estate in said county and State, and that I am well acquainted with the handwriting of said master in chancery, and verily believe that the name subscribed to the said certificate is genuine.

39 In testimony whereof, I have hereunto set my hand and affixed the seal of court at Morristown, this 14th day of November, 1904.

[SEAL.] DANIEL S. VOORHEES, Clerk.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington and others, defendants. In equity.—Replication to answer of defendant Sayles, Zahn Company.—Guggenheimer, Untermyer & Marshall, solicitors for defendants, No. 30 Broad street, city of New York.—U. S. circuit court, southern district of New York, Filed Nov. 15, 1904, John A. Shields, clerk.

40 United States Circuit Court for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants, *against* JOHN J. HARRINGTON, DENNIS A. HARRINGTON, Sol Sayles Company, and Sayles, Zahn Company, Defendants.	In Equity. Action No. 1.

Upon the bill of complaint herein and the answers of the defendants John J. Harrington and Dennis A. Harrington and the Sayles Zahn Company, and the replication filed by the complainants herein, and upon the affidavit of Philip J. Britt, solicitor for the defendants John J. Harrington and Dennis A. Harrington, verified the 5th day of December, 1904, and hereunto annexed, and upon all the papers and proceedings herein, let the complainants, Bertha Doctor and Katherine Sayles, and their solicitors, attorneys and counsel, show cause before the United States circuit court for the southern district of New York, appointed to be held at room No. 124, in the United States post-office building, in the borough of Manhattan, in the city of New York, on the 9th day of December, 1904, at 2 o'clock in the afternoon of said day, or as soon thereafter as counsel can be heard, why the bill of complaint of the complainants herein should not be dismissed on the ground that this court has not jurisdiction of this cause, and why the defendants should not have such other and further relief as to the court may seem just and proper in the premises; and, in the meantime —.

Dated, New York city, the 5th day of December, 1904.

E. HENRY LACOMBE, U. S. C. J.

41 United States Circuit Court for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants, *against* JOHN J. HARRINGTON, DENNIS A. HARRINGTON, Sol Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity. Action No. 1.

STATE OF NEW YORK, County of New York, } ss.:

Philip J. Britt, being duly sworn, says, that he is the solicitor for John J. Harrington and Dennis A. Harrington, two of the defendants in the above entitled action.

That this action was begun by the complainants in the month of September 1904, and issue was joined herein by the filing of an answer on behalf of the defendants John J. Harrington and Dennis A. Harrington and the defendant Sayles Zahn Company on the first Monday of November, 1904. That a replication was filed by the complainants in the month of November 1904. That deponent was served with a notice of the examination of witnesses on the part of the complainants before John A. Shields, Esq., one of the standing examiners of this court, at his office in the United States post office building, in the borough of Manhattan, city of New York, on the 1st day of December, 1904, at 10.30 o'clock in the forenoon of that day. That upon said date and at the said time and place there attended Louis Marshall, Esq., counsel for the complainants, John J. Adams, Esq., of counsel for the defendants Harrington, and your deponent, as well as Robert O'Byrne, Esq., the solicitor for the defendant Sayles Zahn Company. That said John A. Shields, Esq., was not present at said time and place, having been confined
42 to his house by illness, and the defendants' solicitors refused to consent to have witnesses sworn or any testimony taken in the absence of said John A. Shields. That later in the day of said 1st day of December, 1904, deponent, as solicitor for the defendants John J. Harrington and Dennis A. Harrington, was served with a notice that the examination of witnesses on the part of the complainants would take place before the aforesaid John A. Shields or Thomas Alexander, Esq., or such other of the standing examiners of this court as may be present at their office, room No. 78, in the United States post office building, New York city, on the 3rd day of December, 1904, at 10.30 o'clock of the forenoon of that day.

That this action is sought to be maintained in the circuit court of the United States, upon the ground that the complainants are residents, inhabitants and citizens of the State of New Jersey, and that all of the defendants are citizens of the State of New York.

That an examination of the bill of complaint, which is herewith presented and hereby made a part of this affidavit with the same force and effect as if more fully and at large set forth herein, shows that these complainants seek to maintain this action by reason of their claiming to be stockholders of the Sol Sayles Company, but that it is in reality an action by the corporation, the Sol Sayles Company, and that this is a derivative suit. The bill of complaint shows the Sol Sayles Company and the Sayles Zahn Company to be corporations organized and existing under the laws of the State of New York, and further show that the defendants, John J. Harrington and Dennis A. Harrington are also residents and citizens of the State of New York.

The bill of complaint further shows that the complainants are not parties to the suit in their individual characters, but
43 merely as members and component parts of the body or legal entity known as the Sol Sayles Company, and are, therefore, to be presumed to reside where the domicile of the Sol Sayles Company was fixed by law, and are also to be regarded as citizens of the State of New York from which the Sol Sayles Company derived its existence and powers.

That this action being, therefore, one in which all of the real parties are citizens of the State of New York, and inasmuch as the jurisdiction of the circuit court of the United States is limited to that conferred upon it by the Constitution and the laws of the United States, deponent respectfully submits, that this court has not jurisdiction to entertain this action, and deponent prays that an order may be made herein dismissing the complainants' bill of complaint herein, and deponent further prays, that all proceedings on the part of the complainants, their attorneys, solicitors and counsel be stayed until the final hearing and determination of this motion and the entry of the order thereon.

Deponent further states, that no previous application has been made to any court or judge thereof for this order.

PHILIP J. BRITT.

Sworn to before me this 5th day of December, 1904.

[SEAL.] ROBERT O'BYRNE,
Notary Public, Kings Co., Cert. Filed in N. Y. Co.

44 (Endorsed:) Doctor *v.* Harrington. In arranging the parties relatively to the controversy the Sol Sayles Co. must be grouped on the side of the complainants. That would result in bringing citizens of the same State on both sides of the litigation, and this court is without jurisdiction. E. H. Lacombe U. S. C. J. Motion granted. Dec. 10, 1904.

(Endorsed:) United States circuit court, for the southern district of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles Zahn Company, defendants.—Affidavit and order

to show cause—Philip J. Britt, attorney for def'ts Harrington, No. 27 William St. New York city.—Due and timely service of a copy of the within affidavit and order to show cause is hereby admitted. Dated Dec. 5th, 1904. Robert O'Byrne, solicitor for Sayles, Zahn Co.—Copy received Dec. 3, 1904, Guggenheimer, Untermyer & Marshall, solicitors for complainants.—U. S. circuit court, southern district of New York, Filed Dec. 10, 1904, John A. Shields, clerk.

45 At a term of the United States circuit court, for the southern district of New York, held in the borough of Manhattan, New York city, at the post office therein, on the 16th day of December, 1904.

Present: Hon. E. Henry Lacombe, circuit judge.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL SAYLES Company, and Sayles, Zahn Company, Defendants.

A motion having been made herein on behalf of the defendants John J. Harrington and Dennis A. Harrington for an order dismissing the bill of complaint of the complainants herein, on the ground that this court has not jurisdiction of this cause of action, and said motion having come on to be heard before this court on the 9th day of December, 1904; and after reading and filing the bill of complaint of the complainants herein and the answers of the defendants John J. Harrington and Dennis A. Harrington, and the answer of the defendant Sayles Zahn Company, and the replication thereto filed by the complainants herein, and the affidavit of Philip J. Britt, the solicitor for the defendants John J. Harrington and Dennis A. Harrington, verified the 5th day of December, 1904, and the order to show cause why the bill of complaint of the complainants herein should not be dismissed on the ground that this court has not jurisdiction of this cause, granted herein on the 5th day of December, 1904, and after hearing John J. Adams, Esq., of counsel for the defendants, John J. Harrington and Dennis A. Harrington, in favor of the granting of said motion, and Louis Marshall, Esq.,
46 of counsel for the complainants herein, in opposition thereto, and Robert O'Byrne, Esq., solicitor for the defendant Sayles Zahn Company, appearing and not objecting to the granting of this motion, and due deliberation having been had, it is

Ordered, that the bill of complaint of the complainants herein be and the same is hereby dismissed, on the ground that this court has not jurisdiction of this cause of action.

E. H. LACOMBE,
U. S. Circuit Judge.

47 United States Circuit Court for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL SAYLES Company, and Sayles, Zahn Company, Defendants.

SIRS: You will please take notice, that the foregoing is a copy of an order which will be presented to Hon. E. Henry Lacombe, circuit judge of the United States circuit court, for the southern district of New York, at his chambers, in the New York post office building, in the borough of Manhattan, in the city of New York, on the 16th day of December, 1904, at 10:30 o'clock in the forenoon of said day, for settlement and entry.

Dated New York, December 14th, 1904.

Yours, &c.,
PHILIP J. BRITT,
Solicitor for Defendants John J. Harrington and Dennis A. Harrington.

Office & P. O. address, No. 27 William street, borough of Manhattan, New York city.

To Messrs. Guggenheimer, Untermyer & Marshall, solicitors for complainants, No. 30 Broad street, New York city; Robert O'Byrne, Esq., solicitor for defendant Sayles, Zahn Co., No. 27 William street, New York city.

48 (Endorsed:) United States circuit court, southern dist. of New York.—Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles Zahn Company, defendants.—Order and notice of settlement.—Philip J. Britt, solicitor for def'ts Harrington, No. 27 William St. New York city.—Due and timely service of a copy of the within proposed order and notice of settlement is hereby admitted. Dated December 14th, 1904. Robert O'Byrne, solicitor for def't Sayles, Zahn Co.—Copy received, Dec. 14, 1904 Guggenheimer, Untermyer & Marshall, solicitors for complainants.—U. S. circuit court, southern district of New York, Filed Dec. 16, 1904, John A. Shields, clerk.

49 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL Sayles Company, and Sayles, Zahn Company, Defendants. } In Equity.

Certificate of question of jurisdiction upon appeal from the circuit court of the United States for the southern district of New York, second circuit, to the Supreme Court of the United States.

This cause coming on for hearing upon the application of the defendants John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, to dismiss the said cause on the ground of want of jurisdiction in this court to consider the same, and said application having been duly submitted to and fully considered by this court, said application to dismiss was sustained, and a decree dismissing this cause was duly entered by this court for the reason and upon the ground that the court had no jurisdiction of the said cause upon the facts alleged in the complainants' bill of complaint, to which ruling the complainants duly excepted.

And the said complainants being desirous of taking an appeal from the decree of the court sustaining said application to dismiss, and dismissing this cause as aforesaid, and having this day applied to this court for a certificate as required in such cases,

50 Now, therefore, the court hereby certifies to the Supreme Court of the United States, the question of jurisdiction which has arisen upon the aforesaid application to dismiss, to wit, whether or not the complainants' bill of complaint showed that there was such diversity of citizenship between the parties complainant and parties defendant in this cause as would be sufficient under the provisions of the United States Revised Statutes to confer jurisdiction upon the United States circuit court for the southern district of New York, of this cause.

And this court hereby certifies that the allegations of the complainants' bill of complaint are as follows, to wit:

Bertha Doctor and Katherine Sayles, being each of them a citizen of the State of New Jersey, bring this their bill against John J. Harrington and Dennis A. Harrington, each of them being a citizen of the State of New York and an inhabitant of the southern district of New York, and Sol Sayles Company and Sayles, Zahn Company, each being a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office at the city of New York in said State, and an inhabitant of the

southern district of New York, and thereupon your orators complain and say:

First. The complainant Bertha Doctor now is and at the time of the commission of the grievances hereinafter set forth was an inhabitant, resident and citizen of Madison, Morris county, New Jersey, and the complainant Katherine Sayles now is and at the time of the commission of the grievances hereinafter set forth was an inhabitant, resident and citizen of Berkeley Heights, Long Hill, Morris county, New Jersey.

Second. The defendants John J. Harrington and Dennis A.
51 Harrington now are and each of them is an inhabitant, resident and citizen of the State of New York and the southern district thereof. The defendant Sol Sayles Company is a citizen of the State of New York, being a corporation organized and incorporated by and existing under the laws of the State of New York. The defendant Sayles, Zahn Company is a citizen of the State of New York, being a corporation duly organized and incorporated by and existing under the laws of the State of New York. Each of said corporations has its principal office in the city of New York in said State and is an inhabitant of the southern district of New York.

Third. The defendant Sol Sayles Company was organized in the year 1896 for the purpose of carrying on the business of buying, selling and dealing in meats, poultry and vegetables and other merchandise at wholesale and retail, and to supply hotels and steamships in the State of New York and in neighboring States. It was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars per share, and the business carried on by it was profitable and its stock was at the time of its incorporation and has ever since continued to be of great value.

Fourth. The complainant Bertha Doctor is the owner of two hundred shares of said capital stock, and the complainant Katherine Sayles of three hundred shares thereof, and the defendants John J. Harrington and Dennis A. Harrington own or control the remaining five hundred shares thereof.

Fifth. By an arrangement made beween the defendant John J.
Harrington and the predecessor in title of the complainant
52 Bertha Doctor, six shares of the stock belonging to her were loaned to the said defendant at his special instance and request, in order that he might exercise control over the said corporation until such time as the owner of said shares of stock should require their return in accordance with the arrangement made with the said John J. Harrington.

Sixth. The defendant John J. Harrington, exercising the power thus conferred upon him, has continued to control the defendant Sol Sayles Company and has directed the management of its affairs and dictated its policy and has caused to be elected as its directors himself and the defendant Dennis A. Harrington, and also one John P. Nelson, one Milton C. Bradley and one Solomon Sayles, and caused

the said Solomon Sayles to be chosen as the president of the said corporation, and the said Sayles thereafter acted as such president, but under the complete domination of the defendant John J. Harrington. The said Nelson and Bradley now are and for the past seven years have been in the employ of the defendants John J. Harrington and Dennis A. Harrington in the business carried on by them individually.

Seventh. On or about the 26th day of January, 1898, the defendant John J. Harrington caused to be organized the defendant Sayles, Zahn Company, for the purpose of taking over the business of the defendant Sol Sayles Company and of consolidating the same with a similar business heretofore conducted in the city of New York by one Henry Zahn, and in accordance with the plan of the said defendant John J. Harrington the defendant Sol Sayles Company on or about the first day of February, 1898, sold, assigned, transferred and set over unto the defendant Sayles, Zahn Company all
53 the good-will, machinery, tools, implements, furniture, fixtures, signs, safes, wagons, horses and harness belonging to and used by said defendant Sol Sayles Company in its business, in consideration of the issuance and delivery to the defendant Sol Sayles Company by the defendant Sayles, Zahn Company of fifty thousand dollars par value of the fully paid capital stock of the defendant Sayles, Zahn Company of a total authorized issue of two hundred thousand dollars of capital stock, and at the direction of the defendant John J. Harrington the said fifty thousand dollars of capital stock of the defendant Sayles, Zahn Company were issued for the benefit of the defendant Sol Sayles Company as follows: Five shares thereof in the name of Solomon Sayles, five shares thereof in the name of John P. Nelson aforesaid, five shares thereof in the name of Jacob L. Sayles, five shares thereof in the name of the defendant John J. Harrington, and four hundred and eighty shares thereof in the name of the aforesaid Milton C. Bradley. The said Solomon Sayles and Jacob L. Sayles immediately after the issuance of the said stock to them endorsed the certificates thereof and delivered the said shares of stock to the defendant John J. Harrington for and on behalf of the defendant Sol Sayles Company.

Eighth. The defendant Sol Sayles Company subscribed for fifty thousand dollars additional of the capital stock of the defendant Sayles, Zahn Company, agreeing to pay therefor at such times and in such amounts as the board of directors of the Sayles, Zahn Company should make a call therefor, and the complainants allege, on information and belief, that thereafter said subscription was duly paid and a certificate of stock issued to said Sol Sayles Company for five thousand shares.

Ninth. On or about the said first day of February, 1898,
54 the aforesaid Henry Zahn sold, assigned, transferred and set over unto the defendant Sayles, Zahn Company all the good-will, machinery, tools, implements, furniture, fixtures, signs, safes,

wagons, horses and harness belonging to him and appertaining to his business, receiving therefor fifty thousand dollars par value of the fully paid up stock of the defendant Sayles, Zahn Company.

Tenth. The defendant Sayles, Zahn Company has five directors, who for some years past have been the defendant John J. Harrington and the aforesaid Milton C. Bradley, John P. Nelson, Solomon Sayles and Henry Zahn, and the said defendant John J. Harrington has exercised control over and has dominated the said board of directors and controls its management.

Eleventh. The business of the defendant Sayles, Zahn Company has been profitable since its organization, its net profits during the six years which have elapsed since its incorporation aggregating upwards of three hundred thousand dollars.

Twelfth. Subsequent to the organization of the defendant Sayles, Zahn Company the defendant Sol Sayles Company conducted no active business except to collect accounts and bills receivable and other assets which it retained after the incorporation of the defendant Sayles, Zahn Company and the transfer to said corporation of the assets hereinbefore referred to. The assets so retained were of great value and have never been accounted for by the defendants herein or any of them.

Further complaining of the defendants herein the complainants allege, upon information and belief:

Thirteenth. On or about the first day of February, 1899,
55 the defendants John J. Harrington and Dennis A. Harrington, who were copartners carrying on business under the firm name and style of J. J. Harrington & Company, combining, confederating and conspiring together, and with divers persons at present unknown to the complainants whose names when discovered the complainants pray that they might be at liberty to insert herein with apt words to charge them as parties defendant hereto, and contriving to wrong and injure the complainants in the premises, and with the purpose and intent to cheat and defraud the complainants herein out of their interest in the capital stock of the defendant Sol Sayles Company and out of the interest which the defendant Sol Sayles Company was entitled in the assets of the defendant Sayles, Zahn Company, wrongfully and fraudulently caused the defendant Sol Sayles Company, which was under their domination and control as aforesaid, to execute and deliver to them, without any consideration whatsoever, its promissory notes aggregating twenty-three thousand seven hundred dollars, which were utterly fictitious and were devised by the defendants Harrington for the fraudulent purposes herein set forth.

Fourteenth. Thereafter and on or about the third day of October, 1902, the defendants John J. Harrington and Dennis A. Harrington, in furtherance of their wrongful and fraudulent scheme aforesaid, caused to be instituted an action in the supreme court of the State of New York against the defendant Sol Sayles Company for the purpose of recovering a judgment against said corporation for

the amount of the said promissory notes and the interest which was alleged to have accrued thereon. The complaint in said action was signed by one Philip J. Britt "as attorney for defendant." In truth and in fact the said Britt had for many years been the attorney and counsel for the defendants John J. Harrington and
56 Dennis A. Harrington, was the attorney and counsel for the defendant Sol Sayles Company, and for the defendant Sayles, Zahn Company.

Fifteenth. The summons and complaint in said action were served on Solomon Sayles, the president of the defendant Sol Sayles Company, in the presence of the defendant John J. Harrington. The said Sayles was ignorant of the contents of the said papers, did not and was unable to read the same on account of his defective eyesight, and at the request of the defendant John J. Harrington, and in reliance upon his promise to attend to the matter, delivered to him the said summons and complaint immediately upon the service thereof and without having had any opportunity to confer with counsel with regard thereto or to take any measure to investigate the subject matter thereof.

Sixteenth. Thereupon the defendant John J. Harrington, well knowing that the said Sayles and the defendant Sol Sayles Company were in utter ignorance of the nature of the said action and for the purpose of carrying out his fraudulent intent aforesaid, omitted to interpose any defence to the said action or to inform the stockholders of the defendant Sol Sayles Company, and particularly the complainants herein, of the institution thereof, and caused the said defendant Sol Sayles Company to default in said action, and thereafter, and on the 28th day of October, 1902, caused a judgment to be entered in the office of the clerk of the county of New York in favor of the defendants John J. Harrington and Dennis A. Harrington and against the defendant Sol Sayles Company for the sum of twenty-seven thousand three hundred and fifth-seven and 26/100 dollars, and immediately thereafter caused to be issued to the sheriff of the county of New York an execution directing the said sheriff to collect the
57 amount of said judgment out of the property and assets of the defendant Sol Sayles Company, and the sheriff, acting under the instructions of the said defendants John J. Harrington and Dennis A. Harrington and their attorney Philip J. Britt, thereupon and on said 28th day of October, 1902, called upon the aforesaid Milton C. Bradley and demanded of him the delivery of the certificates of stock in the Sayles, Zahn Company which belonged to the defendant Sol Sayles Company, whereupon the said Bradley, acting under the instructions of the defendants John J. Harrington and Dennis A. Harrington and of the said Britt, delivered to the said sheriff certificates representing one thousand shares of the capital stock of the defendant Sayles, Zahn Company belonging to the defendant Sol Sayles Company of the par value of one hundred dollars per share, to wit, certificate No. 8 for five hundred shares; certificate No. 11 for five shares; certificate No. 12 for five shares; cer-

tificate No. 13 for five shares; certificate No. 14 for five shares; certificate No. 15 for four hundred and eighty shares, and also two bonds, each of the par value of one thousand dollars, being consolidated mortgage five per cent. bonds of the New Jersey Steamboat Company, numbered respectively 201 and 202, with thirty-eight coupons of the par value of twenty-five dollars each attached.

Seventeenth. On the 10th day of November, 1902, in furtherance of the aforesaid fraudulent conspiracy, the defendants John J. Harrington and Dennis A. Harrington caused the sheriff of the county of New York to sell all the right, title and interest of the defendant Sol Sayles Company in the aforesaid certificates of stock and bonds and caused the same to be purchased at said sale for their own benefit, and wrongfully and fraudulently concealed from the
58 complainants herein and from the said Solomon Sayles, and from all persons connected with the defendant Sol Sayles Company, other than the defendants Harrington and the aforesaid Nelson and Bradley, the facts aforesaid, and the complainants and the said Solomon Sayles learned of the aforesaid facts for the first time on or about the first day of July, 1904.

Eighteenth. The shares of stock so acquired by the defendants Harrington at the sale aforesaid were at the time of said sale, as the said defendants well knew, and have ever since continued to be, of the value of upwards of two hundred thousand dollars.

Nineteenth. Immediately upon being informed of the aforesaid facts the complainants caused a demand to be made upon the defendants John J. Harrington and Dennis A. Harrington that they transfer the said shares of stock and the said bonds to the defendant Sol Sayles Company, and that they cause to be issued to the complainants herein certificates representing their interests in the said shares of stock, but the said defendants have refused to comply with the said demand and have insisted that the said shares of stock and the said bonds are their personal and individual property, that neither the defendant Sol Sayles Company nor the complainants herein or either of them have any right, title or interest in the said shares of stock or the said bonds or any part thereof.

Twentieth. The complainants were and each of them was a shareholder of the defendant Sol Sayles Company at the time of the transactions herein complained of. This suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. The com-
59 plainants are unable to secure any corporate action on the part of the defendant Sol Sayles Company to redress the wrongs hereinbefore set forth, nor are they able to obtain any redress at the hands of the stockholders of the said defendant Sol Sayles Company. The board of directors of said corporation is under the absolute control and domination of the defendant John J. Harrington and the said Harrington, by reason of having possession of a majority of the capital stock of the said corporation, likewise controls the action of the stockholders. Although requested

for information with regard to the facts hereinbefore set forth he has refused to give any information with regard thereto and has declined to redress the wrongs of which complaint is herein made or to give to the complainants any opportunity to lay before the board of directors or the stockholders of the defendant Sol Sayles Company the facts herein set forth.

Twenty-first. The complainants further allege that they greatly fear that the defendants John J. Harrington and Dennis A. Harrington will attempt to dispose of the aforesaid shares of stock and bonds to their injury, and that they will attempt to cause them to be transferred on the books of the defendant Sayles, Zahn Company in such a way as to elude the pursuit of the complainants and in order that the said defendants Harrington may enjoy the fruits of their aforesaid fraud, and that unless restrained and enjoined by this honorable court the defendant Sayles, Zahn Company will permit a transfer of said shares of stock to be made upon its books to the nominees and transferees of the defendants Harrington, all to the irreparable injury of the complainants.

60 Twenty-second. The defendants Harrington and the defendant Sol Sayles Company have failed and refused to account to the complainants with respect to the business and assets of the said corporation since the organization of the defendant Sayles, Zahn Company, and with respect to the dividends earned and paid on the shares of stock in the defendant Sayles, Zahn Company belonging to the defendant Sol Sayles Company and which are now claimed by the defendants Harrington by reason of the fraudulent schemes, devices and acts hereinbefore referred to.

Twenty-third. All of which acts, doings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of the complainants in the premises. In consideration whereof and for as much as the complainants are remediless in the premises at and by the strict rules of common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end that said complainants may have such relief, they humbly pray this honorable court that (1) the judgment obtained by the defendants Harrington against the defendant Sol Sayles Company in the supreme court of the State of New York on the 28th day of October, 1902, be declared fraudulent, null and void, and that the same be vacated and set aside; (2) that the levy and sale under the execution issued on the aforesaid judgment to the sheriff of the county of New York be likewise declared fraudulent, null and void and be vacated and set aside; (3) that the defendants Harrington be required to deliver to the defendant Sol Sayles Company the shares of stock and the bonds so sold under the aforesaid execution, and that thereupon the defendant Sol Sayles Company be required to distribute the said certificates of stock of the defendant Sayles,

61 Zahn Company to the several stockholders of the defendant Sol Sayles Company in accordance with their respective in-

terests therein, to wit, to the complainant Bertha Doctor two hundred shares of said capital stock, to the complainant Katherine Sayles three hundred shares thereof, and the remainder to the remaining stockholders of the defendant Sol Sayles Company; (4) that the defendant Sol Sayles Company account to the complainants for all dividends received by it and to which it was entitled on account of the shares held by it in the Sayles, Zahn Company, and for all of its acts with regard thereto; that the defendants John J. Harrington, Dennis A. Harrington, and each of them, be required to account for all shares of stock of the Sayles, Zahn Company which have come into the possession of them or either of them, for all dividends received thereon or upon any portion of said shares of stock, for the bonds of the New Jersey Steamboat Company, for all interest received on account of said bonds or the coupons attached thereto, for all moneys received and collected from accounts, bills receivable and other assets belonging to the defendant Sol Sayles Company and with respect to the business and affairs of said defendant Sol Sayles Company; (5) that the defendants John J. Harrington, Dennis A. Harrington and Sol Sayles Company, and each of them, and each of their attorneys, agents and the directors, officers, employees and servants of the said corporation be severally restrained and enjoined by both the temporary and permanent decrees of this honorable court, from transferring to any person, firm or corporation, other than to the complainants herein, any of the shares of stock of the Sayles, Zahn Company, or the bonds of the New Jersey Steamboat Company, hereinbefore described, or any interest in the said shares of stock or the said bonds, or
62 in the dividends accruing or accrued thereon, and from in any manner interfering therewith; or any of the six shares of stock of the Sol Sayles Company, or any dividends accruing or accrued thereon, or any interest in such shares of stock or dividends, which were received by the defendant John J. Harrington as hereinbefore alleged; (6) and that the defendant Sayles, Zahn Company and each and every of the officers, directors, agents, employees, servants, attorneys and representatives thereof be enjoined and restrained by both the temporary and permanent decrees of this honorable court, from permitting any of its shares of stock heretofore standing in the name of the Sol Sayles Company, or of the defendants John J. Harrington, Dennis A. Harrington, John P. Nelson or Milton C. Bradley, to be transferred to any person, firm or corporation until the further decree of this honorable court in the premises; that they may have not only the writ of injunction of this honorable court, but also that a writ of subpœna be granted directed to the defendants hereinbefore named, requiring them and each of them to appear on a certain day therein to be named before this honorable court, then and there full, true and direct answers to make to all and singular the premises, but not under oath, which is hereby expressly waived, and further to perform and abide by such further order or decree as to the court may seem meet; that the complainants may

have such other and further relief as may be equitable, just and proper in the premises.

And the court further certifies, that upon the said bill of complaint and the defendants' motion to dismiss the same, this court sustained said application to dismiss, and entered a decree of dismissal in accordance therewith, holding that it appeared from the said bill of complaint that there was no such diversity of citizenship between the parties complainant and
63 defendant as would confer jurisdiction upon the United States circuit court for the southern district of New York in this cause within the meaning of the United States Revised Statutes, and that in arranging the parties to this cause relatively to the controversy the Sol Sayles Company must be grouped on the side of the complainants, with the result that citizens of the same State would thus be parties on both sides of the litigation, and thus deprive this court of jurisdiction.

The court further certifies that the amount involved in the controversy which is the subject matter of this cause was in excess of two thousand dollars, exclusive of interest and costs.

Done this 23d day of December, 1904.

E. HENRY LACOMBE, U. S. C. J.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor and another, complainants, against John J. Harrington and others, defendants.—Certificate of question of jurisdiction on appeal.—Guggenheimer, Untermyer & Marshall, sol'rs for complainants, No. 30 Broad St. city of New York. U. S. circuit court, southern district of New York. Filed Dec. 23, 1904. John A. Shields, clerk.

64 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants, *against* JOHN J. HARRINGTON, DENNIS A HARRINGTON, Sol Sayles Company, and Sayles, Zahn Company, Defendants.	Petition on Appeal.

The above named complainants, in the above entitled cause, Bertha Doctor and Katherine Sayles, conceiving themselves aggrieved by an order and decree made and entered by this court in the above entitled cause on the 16th day of December, 1904, wherein and whereby it was ordered and decreed that this action be dismissed for the reason that the court has no jurisdiction thereof, hereby desire to appeal to the Supreme Court of the United States from said decree, and therefore pray that this their petition for such

appeal may be allowed, and that the transcript of record, proceedings and papers upon which the aforesaid order and decree was made, may be sent duly authenticated, to the Supreme Court of the United States.

Dated, December 22d, 1904.

BERTHA DOCTOR,
KATHERINE SAYLES,
By GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor, and another, complainants, against John J. Harrington and others, defendants.—Petition on appeal.—Guggenheimer, Untermyer & Marshall, sol'rs for complainants, No. 30 Broad street, city of New York.—U. S. circuit court, southern district of New York. Filed Dec. 23, 1904. John A. Shields, clerk.

65 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Defendant, *against* JOHN J. HARRINGTON, DENNIS A. HARRINGTON, Sol Sayles Company, and Sayles, Zahn Company, Defendants.	Order Allowing Appeal.

The above named complainants, Bertha Doctor and Katherine Sayles, having presented their petition, asking leave to appeal to the Supreme Court of the United States from the order and decree entered in this action on the 16th day of December, 1904, dismissing this cause for the reason that the court had no jurisdiction thereof,

Now, on motion of Guggenheimer, Untermyer & Marshall, solicitors and counsel for the complainants,

It is ordered, that an appeal to the Supreme Court of the United States, from the order and decree heretofore filed and entered herein, dismissing the bill of complaint herein, on the ground of want of jurisdiction, be and the same is hereby allowed, and that the certified transcript of the record, and of all proceedings herein, be forthwith transmitted, duly authenticated, to the Supreme Court of the United States; and it is further

Ordered, that the bond on appeal be fixed at the sum of two hundred and fifty dollars, as a bond for costs and damages on appeal.

Dated, December 23, 1904.

E. HENRY LACOMBE, U. S. C. J.

66 (Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor and another, complainants *vs.* John J. Harrington and others, defendants.—Order allowing appeal.—Guggenheimer, Untermyer & Marshall, sol'rs for complainants, No. 30 Broad St. city of New York.—U. S. circuit court, southern district of New York. Filed Dec. 23, 1904. John A. Shields, clerk.

67 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants, *against* JOHN J. HARRINGTON, DENNIS A. HARRINGTON, Sol Sayles Company, and Sayles, Zahn Company, Defendants. } Assignment of Errors.

Come now the complainants in the above entitled cause and assign errors in the decision and decree of the circuit court of the United States, second circuit, southern district of New York, in the above entitled cause, as follows:

First. The court erred in dismissing the said cause, and in entering the decree in favor of the defendants, dismissing the said cause.

Second. The court erred in holding that it had no jurisdiction of this cause on the ground that there was no such diversity of citizenship of the parties thereto as is required by the provisions of the United States Revised Statutes.

Third. The court erred in holding that it had no jurisdiction of this cause for the reason that in arranging the parties relatively to the controversy the Sol Sayles Company was to be grouped on the side of the complainants with the result of bringing citizens of the same State on both sides of the litigation, and thus depriving this court of jurisdiction.

In order that the foregoing assignments of error may be and appear of record, the complainants present the same to the court,
68 and pray that such disposition be made thereof as in accordance with the law and statutes of the United States in such cases made and provided, and the complainants pray a reversal of the decretal order and decree of dismissal made and entered by said court.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor and another, complainants, against John J.

Harrington and others, defendants.—Assignment of errors.—Guggenheimer, Untermyer & Marshall, sol'rs for complainants, No. 30 Broad St. city of New York.—U. S. circuit court, southern district of New York. Filed Dec. 23, 1904, John A. Shields, clerk.

69 In the Circuit Court of the United States for the Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
against
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL SAYLES Company, and Sayles, Zahn Company, Defendants. } Bond.

Know all men by these presents: that we, Bertha Doctor and Katherine Sayles, as principals, and the United States Fidelity & Guaranty Co. as surety, are held and firmly bound unto John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, in the full and just sum of two hundred and fifty dollars, to be paid to the said John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, their attorneys, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 22nd day of December, nineteen hundred and four.

Whereas, lately, at a session of the circuit court of the United States, second circuit, southern district of New York, in a suit pending in said court between the said Bertha Doctor and Katherine Sayles, complainants, and John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, defendants, an order or decree was rendered against the said Bertha Doctor and Katherine Sayles, dismissing the bill of complaint herein on the ground of lack of jurisdiction, and the said complainants having obtained from the said court an order allowing an appeal to
70 the Supreme Court of the United States, to reverse the aforesaid order and decree, and a citation directed to the said John J. Harrington, Dennis A. Harrington, Sol Sayles Company, and Sayles, Zahn Company, is about to be issued citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at the city of Washington, District of Columbia.

Now the condition of the above obligation is such that if the said Bertha Doctor and Katherine Sayles shall prosecute their said appeal to effect; and shall answer all damages and costs that may be awarded against them, if they fail to make their appeal good, then

the above obligation to be void, otherwise to be in full force and effect.

BERTHA DOCTOR. [SEAL.]
KATHERINE SAYLES. [SEAL.]
[SEAL.] THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By SYLVESTER J. O'SULLIVAN, Manager.

Attest:
GEORGE E. HAYES,
Attorney in Fact.

STATE OF NEW YORK, } ss:
County of New York, }

I certify, that on this 22nd day of December, 1904, before me personally appeared the above named Bertha Doctor and Katherine Sayles, to me known and known to me to be the individuals described in and who executed the above bond, and they severally acknowledged to me that they executed the same.

GEO. P. FERGUSON,
[SEAL.] Notary Public, New York County.

The sufficiency of the foregoing bond and the sureties thereon is hereby approved, this 23rd day of December, 1904.

E. HENRY LACOMBE, U. S. C. J.

71 Affidavit, Acknowledgement and Justification by the United States Fidelity and Guaranty Company.

(Cut.)

STATE OF NEW YORK, } ss:
County of New York, }

Before me personally came Sylvester J. O'Sullivan, known to me to be the manager of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Bertha Doctor and ano., as surety thereon, who being by me duly sworn, deposes and says that he resides in the city of New York, State of New York, and that he is the manager of said The United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of Maryland; that said company has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Bertha Doctor

& ano., is the corporate seal of said The United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as manager of said company; and that he is acquainted with George E. Hayes, and knows him to be attorney in fact of said company; and that the signature of said George E. Hayes, subscribed to said bond is the genuine handwriting of said George E. Hayes, and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of
72 one million dollars ($1,000,000.00).

SYLVESTER J. O'SULLIVAN.

Sworn to, acknowledged before me, and subscribed in my presence this 22nd day of December, 1904.

[SEAL.]

VINCENT J. BOYLE,
Notary Public, New York County.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor, and another, complainants, against John J. Harrington and others, defendants.—Bond.—Guggenheimer, Untermyer & Marshall, sol'rs for complainants, No. 30 Broad St., city of New York.—U. S. circuit court, southern district of New York. Filed Dec. 23, 1904. John A. Shields, clerk.

73 The President of the United States to John J. Harrington, Dennis A. Harrington, Sol Sayles Company, and Sayles, Zahn Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, second circuit, southern district of New York, wherein Bertha Doctor and Katherine Sayles are the complainants, and you are the defendants, to show cause, if any there be, why the order and decree in the said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness, Honorable E. Henry Lacombe, judge of the circuit court of the United States, second circuit, southern district of New York, this 23rd day of December, nineteen hundred and four, and of the Independence of the United States the one hundred and twenty-ninth.

E. HENRY LACOMBE, U. S. C. J.

Service of the foregoing citation on appeal, admitted by copy at the city of New York, southern district of New York, this 23rd day of December, 1904.

PHILIP J. BRITT,
Solicitor for Defendants Harrington.
ROBERT O'BYRNE,
Solicitor for Sayles, Zahn Co.

74 U. S. Circuit Court, Southern District of New York.

BERTHA DOCTOR and KATHERINE SAYLES, Complainants,
ag'st
JOHN J. HARRINGTON, DENNIS A. HARRINGTON, SOL SAYLES COMPANY, and Salyes, Zahn Company, Defendants.

Affidavit of Service.

STATE OF NEW YORK, County of New York, } *ss:*

Mark Trautfield of the county of New York, being duly sworn, says that he is over twenty-one years of age, and that on the 28th day of December, in the year one thousand nine hundred and four he served a copy of the annexed citation on The Sol Sayles Company one of the defendants in this action, by delivering the same to John T. Nelson its secretary at No. 615 West 59th St.

MARK TRAUTFIELD.

Sworn to before me this 28th day of December, 1904.

[SEAL.] RAPHAEL BRILL,
Notary Public, No. 236, New York County.

(Endorsed:) United States circuit court, southern district of New York.—Bertha Doctor and another, complainants, against John J. Harrington and others, defendants.—Citation.—Guggenheimer, Untermyer & Marshall, sol'rs for complainants, No. 30 Broad street, city of New York.—U. S. circuit court, southern district of New York, Filed Dec. 24, 1904, John A. Shields, clerk.

75 UNITED STATES OF AMERICA, Southern District of New York, } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to seventy-four inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause en-

titled Bertha Doctor and Katherine Sayles, complainants, against John J. Harrington, Dennis A. Harrington, Sol Sayles Company and Sayles, Zahn Company, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 30th day of December, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal of U. S. Circuit Court, Southern Dist. New York.]

JOHN A. SHIELDS, Clerk.

Endorsed on cover: File No. 19,577. S. New York C. C. U. S Term No. 477. Bertha Doctor and Katherine Sayles, appellants, *vs.* John J. Harrington, Dennis A. Harrington, Sol Sayles Company, and Sayles, Zahn Company. Filed December 31st, 1904. File No. 19,577.